IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Civil Writ Petition No.339 (S/B) 2003

Ved Prakash Sharma ... Petitioner

Versus

Hemwati Nandan Bahuguna,
Garhwal University, Srinagar
(Garhwal) through its Registrar
and four others. ... Respondents

Hon'ble P.C. Verma, J.
Hon'ble Irshad Hussain, J.

(Delivered by Hon'ble P.C. Verma, J.)

We dismissed the writ petition on 29.07.2003 for the reasons to follow later on.

Now we proceed to record our reasons. The petitioner being a senior most teacher of the College was officiating as Principal of the College known as D.A.V. (P.G.) College, Dehradun affiliated to the Hemwati Nandan Bahuguna Garhwal University, Srinagar (Garhwal) on retirement of the permanent Principal of the College on 30.06.2000. The date of birth of the petitioner is 07.07.1943 and he has attained the age of 60 years on 07.07.2003.

The petitioner was appointed as officiating Principal under Clause 13.20 of the First Statutes of the University of Hemwati Nandan Bahuguna, Garhwal 1978, which reads as under:-

> "13.20. When the office of the Principal of an affiliated college falls vacant, the Management may appoint any teacher to officiate as Principal for a period of three months or until the appointment of a

> regular Principal, whichever is earlier. If on or before the expiry of the period of three months any regular Principal is not appointed, or such a Principal does not assume office, the senior most teacher in the college shall official as Principal of such college until a regular Principal is appointed."

The Secretary of the Board of Management of the of the institution, vide his letter dated 06.06.2003, contained in Annexure No.2 to the writ petition, opined that the petitioner should hand over the charge of officiating Principal of the College to one Sri R.L. Saral-respondent No.5 writ effect from 08.07.2003.

The petitioner has prayed for quashing of this recommendation of the Secretary, vide his letter dated 06.06.2003, contained in Annexure No.3 to the writ petition and has further prayed that respondents be directed not to implement the recommendation dated 06.06.2003 made by the Board of Management, D.A.V. (P.G.) College, Dehradun and further restraining the Board to take any follow up action on the recommendations dated 06.06.2003. The petitioner further prays that the respondents be directed not to interfere with the peaceful functioning of the petitioner as Officiating Principal till 30th June, 2004.

The main contention of the learned counsel for the petitioner is that Clause (18) of Section 2 of the U.P. State Universities Act clearly defines the teacher which teacher whose date of superannuation does not fall on 30th June, shall continue in service till the end of academic session. The petitioner is continuing by virtue of being senior most teacher under law. Therefore, in view of these provisions of law, the petitioner is entitled to continue till 30th June, 2004. Contrary recommendation is illegal,

arbitrary and cannot be given effect to, hence liable to be quashed.

He further contended that in the similarly situated officiating Principal of Kanhiya Lal Degree College, Roorkee, District-Hardwar) affiliated to Hemwati Nandan Bahuguna Garhwal University, Srinagar (Garhwal) has recently been allowed to officiate till 30th June next by the Director, Higher Education, Uttaranchal-respondent No.4.

Admittedly, the petitioner was not a substantively appointed a permanent Principal. He was officiating Principal by virtue of his being senior most teacher appointed by the Management under Clause 13.20 of First Statutes of the University of Hemwati Nandan Bahuguna, Garhwal, 1978.

Part-I of Chapter XVII of First Statutes of the University of Hemwati Nandan Bahuguna, Garhwal, 1978 deals with Conditions of Services of Teachers of Affiliated Colleges.

Part III of Chapter XVII of the above Act deals with the age of Superannuation.

Clause 17.13 to Clause 17.15 of Part of the above Act is relevant for the purposes of present writ petition which is reproduced as under:-

> **"17.13.** In this part the expression "new scale of pay" shall have the meaning assigned to it in Statute 16.23. [Section 49].
>
> **"17.14.** (1) The age of superannuation of a teacher of an affiliated college shall be 60 years. [Section 49].
>
> (2) The date of superannuation of such a teacher shall be the date immediately preceding his 60th birthday.

17.15. No extension in service beyond the age of superannuation shall be granted to any teacher after the date of commencement of these Statutes: [Section 49].

[Provided that a teacher whose date of superannuation does not fall on June 30, shall continue in service till the end of the academic session, that is, June 30 following, and will be treated as on **re-employment** from the date immediately following his superannuation till June 30, following:

Provided further that such physically and mentally fit teachers shall be re-appointed for a further period of two years, after June 30, following the date of their superannuation, as were imprisoned for taking part in freedom struggle of 1942 and are getting freedom fighters pension.]

Provided also that the teachers who were re-appointed in accordance with the second proviso as it existed prior to the commencement of the Garhwal University (Twenty-second Amendment) First Statutes, 1988 and a period of one year has not elapsed after the expiry of the period of their re-employment, may be considered for reappointment for a further period of one year.]"

Clause 17.15 of the Statutes provides that no extension in service shall be granted after completing 60 years' of age. The proviso permits a teacher whose age of superannuation does not fall on 30th June to continue to server till the end of academic session.

First proviso to clause 17.15 above is very clear that a teacher whose date of superannuation does not fall on June 30, shall be allowed to continue till the end of next academic session that is June 30 following and will be

treated a on re-employment from the date following his superannuation till 30th June following, Therefore, a teacher who attains his age of 60 years shall be allowed to continue on re-employment in terms of the proviso. Meaning thereby he will go at the bottom of the seniority list of the teachers of the affiliated College who cannot be appointed as officiating Principal where the senior most teacher is officiating as Principal under Clause 13.20 of the Statutes above.

Section 2 of the U.P. State Universities Act, 1973 is a interpretation clause defines the words used in the body of the Act. Section 2 begins with the qualifying words "in this Act, unless the context otherwise requires".

Sub-section 15 of Section 2 defines the "Principal". In relation to an affiliated, associated or a constituent college, means the head of such college.

Sub-section 18 of Section 2 defines "teacher" means a person employed for imparting instruction or guiding or conducting research in the University or in an Institute or in a constituent, affiliated or associated college and includes a Principal or a Director.

By defining these two words separately the intention of the legislature are clear that the meaning of the "Principal" and "teacher" has to be given in the context it is used. The "Principal" being head of the college has a distinct and superior statues than that of a teacher and is a separate office. The Principal is required to give a report relating to a probational teacher whose service is to be terminated during the period of probation or on the expiry of probation under Clause (c) of sub-section 2 of Section 31 of U.P. State Universities Act, which deals with the appointment of the teachers. Likewise, in the selection committee for appointment of Principal a Dean who himself

is a teacher shall not sit in the selection committee as exempted by the proviso appended to Clause (c) of sub-section 4 of Sec.31 which provides for selection of the committee for appointment of the Principal of an affiliated college. The Principal of the college and another teacher of the nominated college by the Principal shall be the member of the selection committee for appointment of other teachers of an affiliated college or associated college under clause (d) of sub-section 4 of Sec.31. The word other the distinction between the Principal and teacher. Section 49 of the Act enables to make Statutes which may provides for;

(a) . . .

(b) . . .

(c) . . .

(d) "The classification and recruitment (including minimum qualifications and experience) of **Principals and others teachers** of the University and of affiliated and associated colleges, the maintenance by them of their annual academic progress report, the rules of conduct to be observed by them and their emoluments and other conditions of service (including provisions relating to compulsory retirement)."

The aforesaid provisions clearly draw a distinction between the Principal and teacher. Therefore, while construing the definition of "teacher" the distinction and the context in which it is used will have to be kept in mind.

While applying the definition of the teacher which includes Principal in the context of proviso to Clause 17.15 of the Statues which specifically provides that after attaining the age of 60 years after 30th June, the teacher will continue till the next following 30th June but he will be

on re-employment and, therefore, such teacher looses his right to officiate as Principal under Clause 13.20 of the Statutes as he looses his seniority on re-employment. Therefore, in this context the Principal appointed under Clause 13.20 of the Statutes will not be included in the definition of teacher as defined under sub-Section 18 of Sec.2 of the U.P. State Universities Act.

While considering Clause 17.15 of the Statutes, in case of **S.K.Rathi versus Prem Hari Sharma and others, reported in Judgments Today 2000 (8) Supreme Court, Page 267** in Para-5 the Apex Court has held as under:-

> "There is no doubt that the said decision would enable respondent no.1 to continue as a teacher, which is his substantive appointment, up to 30th June, following the day when he attained the age of 60 years, but this clause cannot allow him to continue as an acting Principal which is a different post altogether. It cannot be disputed that the post of Principal and of the teacher is not the same. It is a teacher on promotion who is appointed as a Principal and there is no decision of the Government giving extension beyond the age of 60 years to a Principal. This being so, the appeal is allowed and the decision of the High Court permitting respondent no.1 to function as Principal of the Institution till 30th June 2000 is set aside."

Thus, the challenge by the petitioner to the recommendation of the Secretary, Board of Management-vide his letter darted 06.06.2003, for which a writ of certiorari is sought is misconceived and is rejected. On the aforesaid view it is also held that the recommendation of the Director, High Education Uttaranchal permitting an adhoc Principal who was senior most teacher to continue upto to following 30th June in Kanhiya Lal D.A.V. College, Roorkee, District-Haridwar is also contrary to the law and the benefit of parity cannot be granted to the petitioner as

Article 14 of the Constitution of India does not contemplate negative equality.

Learned counsel for the petitioner heavily relied on the judgment of division bench of High Court Allahabad in the case **Udai Narain Pandey versus Director of Education (Higher Education), Allahabad and others, reported in (1999) 3 U.P.Local Bodies Educational Cases, Page 1887.** In that case the High Court allowed the Principal to continue till following June 30, for the reason that Princi0pal in that case was a substantively appointed Principal which is stated in Para-15 of the judgment which is reproduced as under:-

> "In the present facts the Respondent No.5 admittedly was appointed on substantive post of Principal of the institution concerned and while holding the said post, date of superannuation came. Admittedly, apart from the said appointment as teacher in the said institution. Therefore, applying the law as aforesaid, after the date of superannuation the Respondent No.5 was to continue in service on re-employment as Principal."

Therefore, the ratio of the judgment is not attracted in the facts and circumstances of the present case.

Since the petitioner cannot be allowed to continue after 60 years of age as officiating Principal on account of his being teacher, the other relief prayed in the writ petition also cannot be granted.

For the reasons recorded above, the writ petition fails and is hereby dismissed. We have already pronounced the operative portion of the order on 29.07.2003 and we have now given the reasons for the order pronounced.

10.10.2003 (Irshad Hussain, J.) (P.C. Verma, J.)
P.Singh